

# Legal Assistance Resource Center ♦ of Connecticut, Inc. ♦

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## **S.B. 138 -- Summary judgment motions in juvenile court**

Human Services Committee public hearing -- February 23, 2010

Testimony of Raphael L. Podolsky

<p><u>Recommended Committee action:</u> <b>OPPOSE UNLESS AMENDED TO PRECLUDE USE OF SUMMARY JUDGMENT BY DCF</b></p>
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This bill, as drafted, permits any party to file a motion for summary judgment in juvenile court proceedings concerning neglect, termination of parental rights, families with service needs, guardianship, emancipation, and other similar non-criminal matters. The bill would be acceptable if it were amended to allow only the respondent (i.e., the parent) to file a motion for summary judgment. Such a motion could then be used only in circumstances where DCF's claim of abuse or neglect is so weak that the respondent is asking the court to terminate the case without a trial. If, however, the bill allows DCF to use this remedy, the bill should be rejected as unfair and dangerous to the integrity of families.

A motion for summary judgment allows a case to be decided on affidavits, i.e., "on the papers," without the parties appearing before the court and having a hearing or a trial. If parental rights are to be terminated or a child is to be taken away without the parent's consent, the judge should always be able to hear witnesses and make his or her own assessment, independent of DCF, as to whether a child should be removed, guardianship involuntarily transferred, or parent rights terminated. The motion for summary judgment is not available in juvenile court precisely because these matters always require a hearing. Even if the respondent has failed to appear, the court needs to be able to question DCF about the child and the DCF investigation. The bill, as drafted, increases the likelihood of DCF winning cases by default and indirectly encourages respondents not to show up in court. In addition, it seems to create unnecessary work for both judges and lawyers. It requires briefing by both sides, which is very time-consuming. Even in a case where it might seem clear that, for example, a parent is guilty of neglect, the court must still individualize its orders, identify what the parent must do to get the child back, etc., so it is hard to imagine that a judge would ever grant summary judgment on the papers alone. In contested cases, if a summary judgment motion were granted, it would almost certainly produce an appeal -- not necessarily over the issue of what is best for the child but over the procedural issue of whether the parties had a right to appear and testify, which is what summary judgment denies them.

On the other hand, permitting the respondent -- the parent -- to move for summary judgment does not raise the same issues and, indeed, allows a parent to ask the court to terminate a DCF proceeding that has no apparent merit at an early stage. For that reason, we would not oppose this bill if it were amended to limit to respondents the right to make a motion for summary judgment.